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Attorney's Docket No.: 10278-014001/99-1

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Douglas A. Treco et al.

Art Unit : 1646

Serial No. : 09/716,166

Examiner : D. Jiang

Filed : November 17, 2000

Title : NUCLEIC ACID CONSTRUCT FOR OPTIMIZED PRODUCTION OF PEPTIDE PRODUCTS

TECH CENTER 1600/2900

Commissioner for Patents  
Washington, D.C. 20231

RESPONSE TO RESTRICTION REQUIREMENT

Responsive to the action mailed April 29, 2002, applicant elects the invention of Group 1, claims 1-15, 17-52 and 83, drawn to a nucleic acid construct for expression of a small peptide, where the nucleic acid encoding the small peptide is an endogenous nucleic acid sequence (and related cells and methods). Applicants respectfully traverse the restriction requirement for the following reasons.

The restriction is improper at least with regard to groups I and II. A proper requirement for restriction requires two conditions. The inventions must be independent (i.e., unconnected in design, operation or effect) or distinct (i.e., related but novel and unobvious over each other) and there must be a serious burden on the Examiner if restriction is required. See MPEP §803. With respect to groups I and II, the Examiner states that "distinct products, different expression methods, and different method steps are involved in the two inventions, such that they require separate searches." In fact, group I and group II are different only in the source of the nucleic acid sequence encoding a small peptide in the claimed cells. The fact that the source of the nucleic acid sequence can be an endogenous or exogenous nucleic acid sequence does not make the restriction groups independent or distinct under the proper standard. Furthermore, there is no evidence that groups I and II would have a separate status in the art or a different field of search.

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

Date of Deposit

May 29, 2002

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Maria Keen

Maria Keen

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Indeed, groups I and II are classified in the same class and subclass. Therefore, the Examiner has not established that a serious burden would be involved in searching groups I and II together. Accordingly, Applicants respectfully request that group II be reclassified with group I and that groups I and II be examined together.

No fee is believed to be due. Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: May 29, 2002

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